

**United States Department of Labor
Employees' Compensation Appeals Board**

CANDACE A. KARKOFF, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Medina, OH, Employer**

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**Docket No. 05-677
Issued: July 13, 2005**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 24, 2005 appellant filed a timely appeal of a December 15, 2004 nonmerit decision of the Office of Workers' Compensation Programs. As the most recent merit decision on appellant's schedule award claim was issued on February 25, 2002, the Board, pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, does not have jurisdiction to review the merits of this case.

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits of her claim.

FACTUAL HISTORY

On June 20, 1995 appellant, then a 45-year-old clerk, filed a claim for compensation for an occupational disease of bursitis and tendinitis that she attributed to throwing parcels on March 15 and 19, 2005. Appellant stopped work on June 20, 1995 and returned to limited duty on June 27, 1995.

The Office accepted appellant's claim for right elbow tendinitis and epicondylitis, right thumb tenosynovitis and left shoulder tendinitis.

In a July 11, 1997 letter, appellant's attorney stated that her claim was in posture for a schedule award. He submitted a February 27, 1998 report from Dr. Thomas G. Ebner, an attending Board-certified orthopedic surgeon, stating that the accepted conditions did not cause any limitation of motion. By decision dated February 4, 1999, the Office found that appellant failed to establish that she had any permanent impairment related to her accepted conditions.

Appellant requested a hearing and submitted an August 17, 1999 report from Dr. Charles C. Shin, a Board-certified orthopedic surgeon, who provided measurements of ranges of motion of appellant's right elbow and thumb and her left shoulder, and concluded that she had a 14 percent permanent impairment of the whole body. An Office medical adviser reviewed Dr. Shin's report and stated that, since the various inflammatory conditions accepted by the Office should not result in decreased joint motion, he could not find a credible reason for the decreased ranges of motion reported by Dr. Shin. Following a hearing held on July 19, 1999, an Office hearing representative found, in a September 22, 1999 decision, that appellant had no permanent impairment related to her accepted conditions.

Appellant appealed this decision to the Board. By decision dated February 15, 2001, the Board found that there was a conflict of medical opinion between Dr. Shin and the Office medical adviser.¹ On April 4, 2001 the Office referred appellant, the case record and a statement of accepted facts, to Dr. Kim Stearns, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion on the question of whether appellant had any permanent impairment related to her accepted conditions. In an April 20, 2001 report, Dr. Stearns concluded that appellant had a combined total of four percent impairment of the upper extremities related to loss of right thumb and left shoulder motion. Applying the tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.) to Dr. Stearns' reported ranges of motion, an Office medical adviser concluded that appellant had a two percent permanent impairment of the right arm due to restricted elbow motion, and a two percent permanent impairment of the left arm due to restricted shoulder motion.

On February 25, 2002 the Office issued appellant a schedule award for a two percent permanent impairment of the right arm, and a two percent permanent impairment of the left arm. On March 1, 2002 appellant's attorney requested a hearing, but by decision dated November 18, 2002, the Office found that he had abandoned his request for a hearing.

By letter dated September 14, 2003, appellant's attorney contended that appellant had the right to file a request for an additional schedule award at any time, and that reconsideration was not an issue. He submitted an August 30, 2003 report from Dr. Alan E. Kravitz, a Board-certified internist, who stated that he had reviewed Dr. Shin's August 17, 1999 report and determined that it showed that appellant had a 14 percent permanent impairment of her upper extremity.

¹ Docket No. 00-965 (issued February 15, 2001).

By decision dated December 15, 2004, the Office found that the additional evidence was not sufficient to warrant review of the February 25, 2002 decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.²

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in a greater permanent impairment.³

ANALYSIS

Although appellant's attorney indicated in his September 14, 2003 letter that appellant was applying for an additional schedule award and that reconsideration was not an issue, the evidence he submitted, the August 30, 2003 report of Dr. Kravitz, attempted to show that the February 25, 2002 schedule award was incorrect based on appellant's condition at that time. Dr. Kravitz's report did not address the effect of any additional employment exposure, nor did it address any progression of appellant's employment-related conditions. The September 14, 2003 letter from appellant's attorney must thus be considered a request for reconsideration.

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Rose V. Ford*, 55 ECAB ____ (Docket No. 04-15, issued April 6, 2004); *Linda T. Brown*, 51 ECAB 115 (1999). This distinction is also made at Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7b (August 2002).

The report from Dr. Kravitz was properly found to be insufficient to warrant review of the merits of appellant's case. Dr. Kravitz's statement that the report of Dr. Shin, a physician on one side of the conflict of medical opinion resolved by Dr. Stearns, showed a 14 percent permanent impairment is a reiteration of what Dr. Shin stated in the report. It does not constitute relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Boards finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim.

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member